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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

A.H., et al.,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO
and JUSTIN LOPEZ

Defendants.

Case No.: 5:23-cv-01028-JGB-SHK

Assigned to:

Hon. District Judge Jesus G. Bernal

Hon. Mag. Judge Shashi H. Kewalramani

**DECLARATION OF ROGER
CLARK IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

[Filed concurrently with Plaintiffs' Memorandum of Points and Authorities; Response to Defendants' Statement of Genuine Disputes of Material Fact; Declaration of Renee V. Masongsong and Exhibits thereto]

DECLARATION OF ROGER A. CLARK

I, Roger A. Clark, declare as follows:

1. I am an expert specializing in the procedures of police practices and proper police tactics, including proper procedures for the detention and arrest of individuals and the type and degree of force, if any, appropriate under different circumstances.

2. I am a competent adult and personally familiar with the facts contained herein and would and could competently testify thereto if called upon to do so.

3. My opinions are based in part on my training, professional experience, and education. I am a twenty-seven year veteran of the Los Angeles County Sheriff's Department. I was hired on December 1, 1965, and I retired from active service on March 31, 1993. My career included six years at the rank of Deputy Sheriff, six years as a Sergeant, and fifteen years as a Lieutenant. I hold a California Peace Officer Standards and Training ("P.O.S.T.") Advanced Certificate, and I am a graduate of the P.O.S.T. Command College (class #5).

4. As a Sergeant and as a Lieutenant, I served on the training staff of the Los Angeles County Sheriff's Department's Patrol School which taught the P.O.S.T. accepted investigation and apprehension methods.

5. During my assignment as the Administrative Lieutenant of the Department's Reserve Forces Bureau, I supervised the training of cadets at our Reserve Training Academy. They were taught proper investigation, interview, and apprehension procedures. I also lectured the Reserve Academy on the P.O.S.T. syllabus: "The Legal and Moral Use of Force and Firearms."

6. During the last five and one-half years of my career, I commanded a specialized unit known as the North Regional Surveillance and Apprehension Team (N.O.R.S.A.T.), which was created to investigate, locate, observe and arrest major career criminals. I held this position until my retirement from the Department on

1 March 31, 1993. The majority of our cases were homicide cases. Arrests frequently
2 occurred in dynamic circumstances including crimes in progress.

3 7. As a Watch Commander and as a Lieutenant, I responded to,
4 investigated, and reported on the use of force and officer involved shootings.

5 8. Since my retirement, I have testified as an expert on jail procedures and
6 jail administration, police procedures, police tactics, investigative procedures,
7 shooting scene reconstruction, trajectory, use of force issues, and bullet casings in
8 Arizona State Courts, California Courts, Washington State Courts and Federal
9 Courts in California, Texas, Colorado, Illinois, Indiana, Pennsylvania, and
10 Washington.

11 9. In forming my opinions regarding the June 21, 2022 fatal shooting of
12 Shane Holland by San Bernardino Sheriff's Department Deputy Justin Lopez, I have
13 reviewed the photographs, police reports, belt recording of Justin Lopez, deposition
14 transcripts, and other related material prior to forming my opinions in this case.

15 10. At the time of this incident involving the shooting of Shane Holland on
16 June 21, 2022, P.O.S.T., basic police officer training on deadly force, and California
17 law surrounding deadly force included the following:

- 18 a. A peace officer is justified in using deadly force upon another
19 person only when the officer reasonably believes, based on the
20 totality of the circumstances, that such force is necessary to defend
21 against an **imminent threat of death or serious bodily injury** to
22 the officer or to another person. (Penal Code Section
23 835a(c)(1)(A); LD 20: Chapter 4—Deadly Force, page 4).
- 24 b. A threat of death or serious injury is imminent when, based upon
25 the totality of the circumstances, a reasonable officer in the same
26 situation would believe that a person has the **present ability,**
27 **opportunity, and apparent intent to immediately cause death**
28 **or serious bodily injury** to the peace officer or another person.

1 An imminent harm is not merely a fear of future harm, no matter
2 how great the fear and no matter how great the likelihood of the
3 harm, but is one that, from appearances, must be instantly
4 confronted and addressed. (Penal Code Section 835a(e)(2)).

- 5 c. Totality of the Circumstances means all facts known to the peace
6 officer at the time, including the conduct of the officer and the
7 subject leading up to the use of deadly force. (Penal Code Section
8 835a(e)(3)).
- 9 d. According to Penal Code Section 835a, fear alone does not justify
10 the use of deadly force. An imminent harm is **not merely a fear of**
11 **future harm**, no matter how great the fear and no matter how
12 great the likelihood of the harm, but is one that from appearances,
13 must be instantly confronted and addressed.
- 14 e. As taught in P.O.S.T., courts have held the following: A simple
15 statement of fear for the officer's safety is not enough; there must
16 be objective factors to justify the officer's concern. The use of
17 deadly force must be objectively reasonable. The use of deadly
18 force must be based on the facts and circumstances known to the
19 officer at the time. (LD 20: Chapter 4—Use of Deadly Force,
20 pages 7-8).
- 21 f. "Unreasonable fear" includes overreactions, and an overreaction in
22 using deadly force can be a use of excessive force. LD 20:
23 Chapter 4—Use of Deadly Force, page 7).
- 24 g. The officer must give some warning prior to the use of deadly
25 force, where feasible. (LD 20: Chapter 4—Use of Deadly Force,
26 page 5).
- 27
28

1 h. Another factor that may determine reasonableness in a use of force
2 incident includes the availability of other objectively reasonable
3 force options. (LD 20: Chapter 4—Use of Deadly Force, page 5).

4 i. An officer must justify every shot he or she fires.

5 11. Under the facts of this case, Deputy Lopez could not justify using
6 deadly force against Mr. Holland simply because Mr. Holland was running away.
7 Mr. Holland did not injure anyone relative to this incident, and at the time of the
8 shooting, he was unarmed. Further, Deputy Lopez failed to give Mr. Holland a
9 verbal warning before using deadly force. At the time of this incident on June 21,
10 2022, P.O.S.T., Learning Domain 20, Chapter 4—Use of Deadly Force, set forth
11 four requirements that would make it reasonable for an officer to use deadly force
12 against a fleeing subject escaping on foot. None of the four requirements were met
13 in this case. These four requirements are:

- 14 a. “. . . if the subject threatens the officer with a weapon or there is
15 probable cause to believe that he has committed a crime involving
16 the infliction of serious bodily harm [or death] . . .”
17 b. “. . . probable cause to believe that the subject poses a threat of
18 death or serious physical harm, either to the officer or others . . .”
19 c. “. . .probable cause to believe that the use of deadly force is
20 reasonably necessary . . .” [to prevent escape]
21 d. “. . . some warning be given prior to the use of deadly force where
22 feasible. . .”

23 12. As explained above, police officers, including Deputy Lopez, are
24 trained that they can only use deadly force in an immediate defense of life situation,
25 in other words, when there is an immediate or imminent threat of death or serious
26 bodily injury. There was no immediate defense of life situation when Deputy Lopez
27 fired his six shots at Mr. Holland. Mr. Holland was unarmed at the time of the
28 shooting. Deputy Lopez never saw a gun on Mr. Holland’s person or in his hand.

1 Mr. Holland never stated that he had a gun. At the time of the shooting, Mr.
2 Holland was moving away from Deputy Lopez, and his back was generally toward
3 Deputy Lopez. At the time of the shooting, Deputy Lopez was approximately 25
4 feet away from Mr. Holland. It appeared to Deputy Lopez that Mr. Holland was
5 trying to get away from him. Mr. Holland never took a shooting stance and never
6 extended his arm. There were no civilians in the vicinity of the shooting. Under the
7 facts of this case, Deputy Lopez could not shoot Mr. Holland for running away or
8 for stating, "I will shoot you" or words to that effect. In order to justify shooting in
9 this case, Deputy Lopez would have to have identified a gun in Mr. Holland's hand
10 and seen that gun coming toward him, which was not the case here.

11 13. A reasonably well trained officer in Deputy Lopez's position would
12 not have continued to pursue Mr. Holland on foot as a solo officer if he reasonably
13 believed that Mr. Holland was armed. A reasonable officer in Deputy Lopez's
14 position would have ceased the foot pursuit after the first time that Holland stated, "I
15 will shoot" or words to that effect, and would have set up a perimeter. There are no
16 objective facts to support Deputy Lopez's alleged belief that Mr. Holland would
17 have posed an immediate threat of death or serious bodily injury to the community if
18 Deputy Lopez let Mr. Holland continue to run and set up a perimeter to contain and
19 search for Mr. Holland. For example, there was no information that Mr. Holland
20 had committed any crime involving injury or death, Mr. Holland was not running
21 directly toward any neighborhood, and he made no threats to harm any civilians.

22 14. Assuming that Holland had the cell phone in his hand, a reasonable
23 officer in Lopez's position would have been able to distinguish a cell phone from a
24 firearm. A cell phone does not have the identifying features of a firearm such as a
25 barrel, trigger, trigger guard, grip, or magazine.

26 15. The autopsy report in this case indicates that Mr. Holland suffered
27 shots to the buttocks and back of the left thigh.

28 16. Deputy Lopez engaged in pre-shooting misconduct and poor tactics in

1 this case. For example, Deputy Lopez ignored basic police training when he
2 pursued Mr. Holland on foot as a solo officer. Deputy Lopez left the driver of the
3 vehicle, Robert Hanson, alone in the vehicle when he chased after Mr. Holland.
4 Deputy Lopez failed to make clear communications over the police radio regarding
5 the incident including failing to specifically request backup. Deputy Lopez also
6 failed to give Mr. Holland sufficient commands or a verbal warning that deadly
7 force would be used, including not giving Mr. Holland a command to “drop it.”
8 Lopez also failed to or seek cover create distance while continuing to observe
9 Holland.

10 17. From the standpoint of police practices and basic police training, **the**
11 **use of deadly force by Deputy Lopez was contrary to P.O.S.T. and basic police**
12 **officer training**, including (but not limited to) for the following reasons:

- 13 a. Mr. Holland posed **no immediate threat of death or serious**
14 **bodily injury** as explained above.
- 15 b. **Deputy Lopez could not shoot Mr. Holland for running** for the
16 reasons explained above.
- 17 c. Mr. Holland committed **no crime involving the infliction of**
18 **serious bodily injury or death.** Deputy Lopez was not
19 responding to a violent or serious crime. Deputy Lopez had no
20 information that Mr. Holland had injured anyone and no
21 information that Mr. Holland had a firearm. Deputy Lopez had no
22 information about Mr. Holland’s criminal history at the time of the
23 shooting.
- 24 d. **Other reasonable alternative force measures** were available,
25 including giving a verbal warning before using deadly force,
26 taking cover, setting up a perimeter, and/or waiting for backup.
- 27 e. **No verbal warning regarding deadly force.** Police officers are
28 trained to give a verbal warning that deadly force will be used

1 when feasible. Deputy Lopez failed to issue a verbal warning
2 prior to using deadly force, even though it would have been
3 feasible to do so under this set of facts.

4 f. **Subjective fear is insufficient to justify a use of deadly force.**

5 Basic police training requires that any use of deadly force must be
6 based on an “objective” rather than “subjective” “reasonable
7 necessity” of action to “imminent danger.” In this case, the record
8 does not support any objectively reasonable explanation that Mr.
9 Holland posed an immediate threat of death or serious bodily
10 injury at the time that any of the shots were fired.

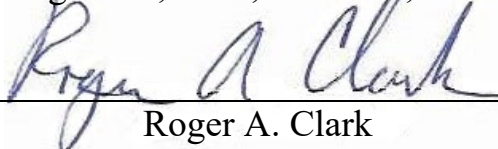
11 g. **Fear of a potential future threat is insufficient.** Even if Deputy

12 Lopez perceived that Mr. Holland posed a potential future threat,
13 that is insufficient to justify his use of deadly force. In order to
14 justify this shooting, Mr. Holland would have needed the present
15 ability, opportunity, and apparent intent to immediately cause
16 death or serious bodily injury to Deputy Lopez or another person.
17 Here, Mr. Holland was unarmed and running away.

18 h. **The number of shots was excessive.** Officers are trained to
19 reassess when they are firing lethal shots. Here, Deputy Lopez
20 fired six shots. Officers are trained that they are required to justify
21 every shot they fire, and here, there is no justification for any of
22 the shots.

23 i. **Deputy Lopez overreacted,** and officers are trained that an
24 overreaction in using deadly force is a use of excessive force.

25 Executed on August 30, 2024, at Santee, California.

26 
27 Roger A. Clark
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